

FILED

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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALFREDO RANGEL-AVILES,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-71961

Agency No. A14-630-122

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 8, 2006^{**}

Before: CANBY, BEEZER and KOZINSKI, Circuit Judges.

Alfredo Rangel-Aviles, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

immigration judge's ("IJ") order denying his motion to reopen and reconsider. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review the denial of a motion to reopen or reconsider for abuse of discretion. *Celis-Castellano v. Ashcroft*, 298 F.3d 888, 890-91 (9th Cir. 2002). We grant the petition for review.

Construing Rangel-Aviles' motion as both a motion to reconsider and a motion to reopen for ineffective assistance of counsel, the BIA denied the motion because it did not establish an error of law or fact and did not comply with *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988). Although Rangel-Aviles' motion did not comply with *Lozada*, the ineffective assistance of counsel is clear from the record as Rangel-Aviles' attorney never informed him of the filing deadline for his cancellation of removal application. *See Rodriguez-Lariz v. INS*, 282 F.3d 1218, 1227 (9th Cir. 2002) (holding that *Lozada* requirements need not be rigidly enforced where ineffective assistance of counsel is apparent from the record). Accordingly, the BIA abused its discretion in affirming the IJ's order denying Rangel-Aviles' motion to reopen for ineffective assistance of counsel.

In light of our disposition, we need not reach Rangel-Aviles' due process challenge.

PETITION FOR REVIEW GRANTED; REMANDED.